IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE T.CH.SURYA RAO

WRIT PETITION NO : 18066 of 2003

Between:

1 M.Venkataswamy Reddy,S/o.Venku Reddy
R/o.Piduru Manubole Mandal, Nellore District.
2 M.Dayakar Reddy, S/o.Krishna Reddy
R/o.Piduru Manubole Mandal, Nellore District.
3 Chittamuru Shankar Reddy, S/o.Balaram Reddy
4 M.Niranjan Reddy, S/o.Radhakrishna Reddy
5 Mannemala Raghuram Reddy, S/o.late M.sundarrami Reddy
6 Ch.Srihari Naidu, S/o.Balaramaiah
7 Talluru Venkaiah, S/o.Narasaiah
8 Ch.Vijaya Mohan, S/o.Narasaiah,
9 V.Ramasubba Naidu, S/o.Venkata Subba Naidu
10 M.Chenchaiah, s/o.Ramachandraiah,
11 G.Venkata Subbaiah, S/o.Ramanaiah,

..... PETITIONERS

AND

1 The District Collector, Nellore
2 The Mandal Revenue Officer, Manubole Mandal, Nellore District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of mandamus declaring the Notification dated 05-06-1990 issued under Section 4 of the Water Tax Act, 1998, notifying Piduru Mogalla Cheruvu and Piduru Bangaramma Cheruvu as Government Sources Category-I and the consequential proceedings of the 1st

Respondent issued vide D.Dis.(D3)5762/2001, dated 21-07-2003 as arbitrary, illegal and contrary to the Judgment dated 16-12-2002 in w.P.No.13156 of 1991.

Counsel for the Petitioners:MR.M.RAVINDRANATH REDDY

Counsel for the Respondents:G.P. for Revenue

The Court made the following O R D E R:

(Per the Hon'ble Sri Justice B.Sudershan Reddy)

The petitioners challenge the notification dated 05-06-1990 purported to have been issued under Section 4 of the Water Tax Act, 1988 (for short "the Act") notifying Piduru Mogalla Cheruvu and Piduru Bangaramma Cheruvu as Category-II Government Source of Irrigation, as bad in law and the consequential proceedings of the first respondent issued vide D.Dis.(D3) 5762/2001, dated 21-07-2003 are also challenged in this writ petition.

In order to consider as to whether the impugned notification and the consequential order dated 21-07-2003 suffer from any illegality, it may be just and necessary to notice a few relevant facts leading to filing of this writ petition.

The petitioners are the 'ayacutdars' under the said two tanks. They have filed W.P.No.13156 of 1991 in this Court challenging the notification issued by the District Collector, dated 05-06-1990, under Section 4 of the Act, whereunder both the tanks have been duly notified as Government Category-II Source of Irrigation, for the purpose of levy and collection of water tax. The petitioners disputed the correctness of the notification mainly on the ground that the water available in the said two tanks is not sufficient for the purpose of raising any crops by the 'ayacutdars' and the water cannot be supplied for at least a period of more than five months as is required

under the provisions of the Act. This Court vide its order dated 16-12-2002, disposed of the writ petition with a direction to the writ petitioners to make a fresh representation before the appropriate authority bringing to its notice, the factual position of water supply from those two tanks and the competent authorities were accordingly directed to take an appropriate decision on the said representation. That pursuant

to the directions of this Court, District Collector, Nellore, made an enquiry into the matter after duly putting the petitioners on notice. The representation filed by the petitioners was duly taken into consideration. The District Collector called for a detailed report from the Sub-Collector, Gudur, and examined the report as well as the representation made by the petitioners. The District Collector vide the impugned proceedings dated 21-07-2003 rejected the representation of the petitioners.

In this writ petition, the learned counsel for the petitioners contended that the reports upon which reliance was placed by the District Collector, for passing the impugned order were not supplied to the petitioners. It is also contended that the certificate issued by the Deputy Executive Engineer has not been taken into consideration by the District Collector.

We have heard the learned counsel for the petitioners and perused the impugned order as well as the counter-affidavit filed by the Mandal Revenue Officer, Manubolu and find no merit in the writ petition.

The impugned order itself discloses that pursuant to the directions of this Court, the District Collector issued notices to the petitioners who were represented by a duly instructed Counsel in the personal hearing on 24-03-2003 held in the Office of the Collector, Nellore. The District Collector not only referred to the certificate issued by the Deputy Executive Engineer but also the report of the Mandal Revenue Officer, Manubolu and found that the notification issued categorizing the tanks in question under category-II Government Source of Irrigation is proper and does not suffer from any infirmities.

In our considered opinion, the question whether the tanks in question can be

categorized as category-II Source of Irrigation, is a pure question of fact, which was enquired into by the District Collector, pursuant to the directions of this Court. That a reasonable opportunity of being heard was provided to the petitioners and the available records were perused by the District Collector.

The sheet anchor of the case of the petitioners rests on the certificate issued by the Deputy Executive Engineer, dated 01-07-1990 certifying that the tanks in question supply water for a period less than five months.

It is not brought to our notice as to under what authority such a certificate could have been issued by the Deputy Executive Engineer. There is no such provision under the Act for issuing any such certificate. In the circumstances, exclusive reliance cannot be placed upon the said certificate for the purpose of determining the categorization of the tanks in question under category-II Source of Irrigation. It is not as if the District Collector totally ignored the contents of the representation, the documents and the material available on record. In the circumstances, the finding recorded by the District Collector cannot be interfered with by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. It is needless to restate that this Court in exercise of its judicial review jurisdiction does not act as a Court of Appeal. The decision making process is not vitiated for the reason that the District Collector provided a reasonable opportunity of being heard to the petitioners pursuant to the directions of this Court. No procedural or substantive infirmities, if any, committed by the Collector in disposing of the representation are brought to our notice. In fact, right of hearing itself has been provided under the orders of this Court by the District Collector, Nellore. In the circumstances, we find it difficult to interfere with the finding recorded by the District Collector.

The learned counsel for the petitioners, however, raised a serious dispute about the finding recorded by the District Collector.

Having regard to the facts and circumstances of the case, we leave it open to the petitioners, if they so intend to avail common law remedy and establish their case

that the tanks in question could not have been categorized as category-II Source of Irrigation and if any such remedy is availed by the petitioners, the same may be considered on its own merits uninfluenced by the dismissal of this writ petition.

The writ petition is accordingly dismissed. No order as to costs.

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(B. Sudershan Reddy,J)

Date:22nd November, 2004.

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(T.Ch.Surya Rao, J)

vrn/ks

To

1 The District Collector, Nellore
2 The Mandal Revenue Officer, Manubole Mandal, Nellore District.

3 Two C.Cs to the G.P. for Revenue, High Court of A.P., Hyderabad (OUT)

4 Two C.D copies